

Appeal Decision

Site visit made on 4 November 2019

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 16 December 2019

Appeal Ref: APP/P1805/W/19/3230823

Land to the rear of 1-6 Smedley Crooke Place, Hopwood, Worcestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Cawdor Capital (Hopwood) Limited against the decision of Bromsgrove District Council.
 - The application Ref 17/01290/OUT, dated 8 November 2017, was refused by notice dated 5 February 2019.
 - The development proposed is up to 10 two-storey dwellings, and alterations to existing access.
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Decision

1. The appeal is dismissed.

Costs Application

2. An application for an award of costs has been made by the appellants, against the Council. That application is the subject of a separate Costs Decision.

Procedural Matters

3. As originally submitted, the planning application was for up to 21 dwellings. While the application was under consideration, the number of dwellings was reduced to 10, and the Council refused permission on this basis. Subsequently, the appellants have requested that the number be amended again, to 9 dwellings. However, to my mind, this would mean considering a scheme that was materially different from that on which the Council made its decision. I have therefore dealt with the appeal based on the application proposal, for up to 10 units.
4. The application sought outline approval, with all details reserved except access and scale. The amended proposal for up to 10 dwellings is accompanied by an access plan, an indicative layout and indicative street elevations. At the appeal stage, an amended access plan has been submitted. In this case, the amendments are minor, and do not affect the substance of the development. I have therefore taken this additional access plan into account.

Planning Background

5. In February 1985, the Council granted an Established Use Certificate (EUC) for the use of the appeal site for the open storage of plant.
6. In October 2014, an appeal for a development of 21 houses on the site was dismissed, for reasons relating mainly to Green Belt (GB) policy.

7. In the present appeal, the Council has confirmed¹ that the site's current use, for storing portable cabins, is considered to fall within the terms of the EUC.

Main Issues

8. In the light of all the submissions made, I find that the main issues in the appeal are as follows:
- whether the proposed scheme would constitute 'inappropriate development' in terms of the relevant GB policies;
 - whether the scheme would accord with Policy H2 of the Alvechurch Parish Neighbourhood Plan, relating to housing development at Hopwood;
 - the effects on highway safety;
 - and whether the scheme should provide any affordable housing.

Reasons for Decision

Green Belt

Relevant GB policies

9. The appeal site lies within the West Midlands GB. Policy BDP4.4 of the Bromsgrove District Plan (the BDP), adopted in January 2017, provides for various types of built development in the GB which are not to be considered inappropriate. One of these, category (g), is the partial or complete redevelopment of previously developed land (PDL), provided that the impact on the GB's openness or purposes would not exceed that of the existing development. This approach broadly accords with paragraph 145 of the National Planning Policy Framework (the NPPF).

PDL status

10. The definition of PDL is set out in the NPPF's Annex 2, and includes land which is or was occupied by a permanent structure and any associated fixed surface infrastructure. In the present case, the Council considers that the areas of tarmac and crushed stone surfacing within the appeal site are fixed surface infrastructure, within the terms of this definition, and therefore that these parts of the site are PDL². On my visit, I saw that the areas of hard surfacing are extensive. Although the Council has not expanded any further on its reasoning on this, I see no obvious flaw in the way the Council has applied the NPPF's definition in respect of these hard surfaced areas.
11. That said, the Council's view regarding PDL status is clearly not shared by everyone. In particular, some of the representations on the appeal proposal suggest that the site's current appearance results from uses and operations that may have been carried out without planning permission. Amongst other things, these allegations relate to the raising of the land by the deposition of demolition waste and other imported materials, and indeed I saw on my visit that such activities have taken place. However, the information before me on these matters, and their planning history, is limited. In the absence of any other evidence, I cannot form any firm view as to the status or relevance of these other past uses and operations. I therefore find nothing in any of these

¹ Email dated 25 November 2019, in reply to Inspector's questions

² The same email, dated 25 November 2019

submissions that leads me to disagree with the Council's view, that parts of the site meet the definition of PDL.

12. Furthermore, NPPF Annex 2 also makes it clear that, for the purposes of the PDL definition, the whole of the area within the curtilage of a site should be treated as a single entity (albeit with the proviso that this does not necessarily mean that the whole site should be developed). At the appeal site, the hard surfacing covers much of the central part of the site, and also extends closer towards the margins in some areas. Based on the extent and disposition of these surfaced areas, I can see no reason to apply a different approach from that suggested in Annex 2. I therefore conclude that the whole site should be treated as PDL.

Openness

13. With regard to openness, both Policy 4.4(g) and NPPF paragraph 145 make it clear that, in terms of GB policy, the impact of the proposed development is to be judged not in isolation, but in comparison with the existing situation. At the time of my visit, the stored cabins were distributed over much of the site, with some stacked on top of each other. The number, size and combined volume of these items was substantial. Although inward views from the A441 and the Redditch Road roundabout are partly screened by the boundary hedge, the cabins' presence was discernible through gaps, and made more noticeable by their light colour and reflective surfaces. From the site entrance on Redditch Road, the whole of the site is fully exposed to public views. From that point, the impression is of a site dominated by large metallic containers and hard surfacing. This impression is further reinforced by the steel gates and metal fencing at this point. Consequently, in its current condition and use, the appeal site does not appear in any meaningful sense as open land. To my mind, its contribution to the openness of the GB is very limited.
14. In the 2014 appeal decision, the inspector commented that the land appeared mostly open. However, that was based on the position some 5 years ago, and I do not have sufficient evidence to draw comparisons with that time. Equally, the appellants argue that in future the existing use could lawfully be intensified, by increasing the numbers of units stored, and their physical extent and stacking height. But in the light of my assessment, as stated above, I see no need to speculate on these matters. I have therefore based my opinion of the existing use, and its effects on openness, on what I saw at the time of my visit.
15. The development now proposed would comprise 10 two-storey dwellings, but the sizes, heights and layout could be controlled to minimise their built form and visual impact. The illustrative plans show that the built elements could be confined to about half the site. The extent of the hard surfacing needed for roads and parking would be significantly less than exists now. The remainder of the site could be left as greenspace and landscaping, with a naturalistic type of planting treatment if required. In my view, these features of the scheme would serve to limit the impact on openness.
16. In 2014, the inspector found that the development then proposed would have a greater and more harmful impact on the GB's openness than the open storage use, but that was in the context of a scheme for 21 dwellings. The present proposal would involve less than half the number of dwellings and associated works. Taking all these matters into account, I conclude that the development now proposed could be carried out with no adverse impact on openness.

Effects on GB purposes

17. Having regard to the remaining requirement under Policy BDP4.4(g), if the appeal site were currently undeveloped, it would potentially contribute to the GB's purposes, particularly in preventing urban sprawl and coalescence, and in safeguarding the countryside from encroachment. But in view of my findings with regard to the effects of the existing storage use on the GB's openness, it is clear that the site's effectiveness in all these roles is already heavily compromised.
18. For the reasons explained above, I have concluded that the development now proposed would have no greater effect than the existing use on openness. It follows therefore that its effect on the GB's purposes would similarly be no worse than neutral.

Conclusion on Green Belt

19. As set out above, the appeal site constitutes PDL, and the appeal scheme would involve no greater impacts on either the GB's openness or purposes than the existing use. The proposed scheme would therefore not constitute 'inappropriate development' in terms of GB policies, under either Policy BDP4.4 or the NPPF. As such, the development would not be in conflict with GB policy.

Policy H2 of the Alvechurch Parish Neighbourhood Plan

20. The Alvechurch Parish Neighbourhood Plan (the APNP) was made in February 2019, shortly after the date on which the Council made its decision on the planning application which is the subject of this appeal. The APNP now forms part of the development plan for the area. With regard to Hopwood and Rowney Green, Policy H2 supports housing developments, subject to a number of detailed criteria as to their location. Criterion (a) includes brownfield land within the built-up area, where the site is closely surrounded by existing buildings. Criterion (f) requires the location to be within the village envelope as defined in the BDP. The stated purpose is to maintain the villages' size and character.
21. Having regard to criterion (f), the village envelope as defined in the BDP excludes the appeal site. I accept that the boundary as currently drawn does not reflect some more recent developments, including Woodpecker Close, but that development is largely peripheral to the appeal site. I also appreciate that both the BDP and APDP anticipate a need for some settlement boundaries to be adjusted, and that this process is now expected to form part of the BDP Review process that is now under way. But none of these matters changes the factual position, that as things stand, the appeal site is outside the envelope. The appeal site therefore fails criterion (f).
22. With regard to criterion (a), for the reasons already given, I am satisfied that the appeal site comprises brownfield land. The site also abuts existing housing on its northern side, at Smedley Crooke Place, and on a short part of its eastern boundary, where it meets one of the houses at Woodpecker Close. But to the west, the houses on the opposite side of Redditch Road are separated from the site by the main road and roundabout, plus a service road and a broad verge. To the south of the roundabout there is only sporadic development, and on its two remaining boundaries, the appeal site is adjoined by open land. On the site itself, although the land is in commercial use, there

are no built structures. The site is therefore not closely surrounded by existing buildings, and nor does it form part of the existing built-up area, as criterion (a) requires.

23. In this context, I note the appellants' reference to the judgement in the *Julian Wood* case³. However, that case related specifically to the interpretation of paragraph 89 of the 2012 version of the NPPF. In the present case, Policy H2 is clear in referring to the boundaries defined in the BDP. But in any event, for the reasons that I have already given, I do not consider that the appeal site currently lies within the built up area, even if that area were to be based on perception rather than the defined boundaries.
24. In passing, I would note that the locational requirements arising under Policy H2 are completely separate from, and additional to, the GB policies considered earlier. Although the two sets of policies are both directed at controlling development outside settlements, they serve different and complementary purposes, in protecting openness in one case and village character in the other. It is also salient that where GB policies rely in part on an assessment of impact, which allows for a comparison with the existing use, Policy H2 contains no such provision. Taking account of these differences, there seems to me no inconsistency in finding accordance with one of these policies and conflict with the other.
25. I conclude that the appeal site falls outside the types of location supported by either criteria (a) or (f) of Policy H2. As such, the proposed development conflicts with this relevant APNP policy.

Highway safety

26. Access to the site is from the A441 Redditch Road, just to the north of its junction with the B4120. The A441 is a principal distributor route, connecting the Birmingham conurbation with the M42 motorway, and carrying around 22,000 vehicles a day. The B4120 is a local distributor connecting to Alvechurch. The junction is configured as a 3-arm roundabout, with a large central island and a wide circulating carriageway which can take two vehicles side-by-side. Each of the three arms has two lanes of entry and two for exit, separated by splitter islands. The speed limit throughout is 40 mph.
27. The access into the proposed development would be sited in much the same position as the existing site access, at the point on Redditch Road where the entry and exit lanes meet, about 30m from the roundabout itself. For northbound traffic wishing to turn into the development, this would mean leaving the roundabout via the exit lane, and then immediately slowing and possibly stopping, to make a right turn across the southbound carriageway. Other drivers coming off the roundabout would then be confronted with a slowing or stationary vehicle in front of them, at just the point where they would be likely to start to accelerate away from the junction. To my mind, siting the new junction in this way, so that right-turning movements would have to be made within the exit lane itself, would be an unusual and potentially hazardous arrangement.

³ [2105] EWCA Civ 195: *Julian Wood v Secretary of State and Gravesham BC*

28. The appellants' proposed scheme seeks to reduce the safety risks, by creating a separate right-turning lane, with a ghost island, additional central hatching, and spiral markings on the roundabout carriageway. But the space available is limited, because of the proximity of the new junction to the roundabout. As a result, the ghost island feature at the start of the exit lane would be very small, and in my view this would make it difficult for approaching drivers to readily identify while navigating the roundabout. In addition, the narrowing of the exit into Redditch Road, from two lanes to one, would be unexpected in the context of the roundabout's other 2-lane entry and exit points. And the restricted length within the right-turn lane would require rapid deceleration by turning vehicles, potentially leading to late and unexpected braking manoeuvres. Consequently, the intended safety measures would themselves have the potential to cause further uncertainty, confusion and danger.
29. I appreciate that the actual recorded speeds on this part of Redditch Road, close to the roundabout, are well below the local speed limit. But even at the 85th percentile speed of 28.4 mph, collisions could result in serious injury. And in any event, driver behaviour is likely to be influenced by the road's design speed, which for the most part is geared towards the speed limit.
30. The revised proposals in Drawing No 2102825-01, Revision A, include additional physical measures to prevent right-turning outward movements at the exit from the appeal site. However, this would not mitigate the dangers of the inward right turn. The scheme would also provide for a new pedestrian crossing point on Redditch Road, comprising dropped kerbs and a central refuge. This would be a modest benefit to the existing community as well as future occupiers of the development, especially in the location now proposed in the revised plan. But this benefit does not outweigh the harm to road safety that I have identified.
31. I fully accept that as long as the existing storage use on the appeal site continues, that use will generate traffic movements in any event. Although the current level is not known, the number could increase significantly, as the EUC contains no specific restrictions on future growth. This existing-use traffic is likely to include a high proportion of heavy goods vehicles. There is currently no restriction on right-turning movements, either into or out of the site, and no proposal to introduce any such restrictions or other safety measures in the context of the existing use. I agree that this existing situation is far from ideal, and although there does not appear to be any significant accident history, there is no guarantee that this will always be so.
32. But nevertheless, it is evident that the existing access is essentially a historic legacy, arising from a land use that is now clearly out-dated and incongruous. Whatever the outcome of the present appeal, it is difficult to envisage that current use continuing in perpetuity. Although dismissing the appeal would do nothing to improve the existing situation for now, neither would it preclude the possibility of a more acceptable proposal coming forward in the future; and in this context, I note that an alternative access, directly off the roundabout, was previously accepted by the Highway Authority. Whereas, allowing the appeal in its present form would mean settling for a new, permanent highway infrastructure, with compromised levels of safety, which would be likely to remain in place for the long term.

33. I conclude that the proposed development would have an unacceptable impact on highway safety. As such it would conflict with BDP Policy BDP16, which seeks amongst other things to ensure that all developments provide safe and convenient access.

Affordable housing

34. BDP Policy BDP8 states that affordable housing will not be sought from developments of 10 units or less, with a combined floorspace of no more than 1,000 sq m. The appeal proposal is for 10 dwellings, and therefore falls below the policy's numerical threshold. The floorspaces given in the Design and Access Statement add up to 780 sq m, and although this is based on details that are only illustrative, the overall figure could be limited by condition or obligation to avoid breaching the 1,000 sq m policy threshold. The proposed development is therefore capable of complying with Policy BDP8, with no requirement for affordable housing.
35. The Council suggests that greater weight should be given to paragraph 63 of the NPPF. But that paragraph simply says that affordable housing should not be sought for developments below the level of major; it does not suggest that for developments above that level, affordable housing should always be required. I therefore see no conflict between Policy BDP8 and the NPPF in this respect.
36. In any event, the BDP is still a relatively recently adopted plan, of less than three years old, and the difference between the local and national policies on this one issue is marginal. On this basis, I can find no clear reason to give anything less than full weight to Policy BDP8.
37. There is therefore no justification in policy terms for requiring the present appeal scheme to provide any affordable housing. It follows that the lack of any such provision in this case does not give rise to a supportable objection.

Other Matters

Housing land supply

38. The Council accepts that the supply of deliverable housing sites is now no more than 3.45 years, based on the Council's latest published figures, for which the base date was April 2019. The appellants challenge the deliverability of some of these sites, without which they suggest the supply would be reduced to 1.4 years.
39. Based on the information before me, I consider that the Council has shown adequate justification for their higher figure. But even on this basis, the shortfall is clearly substantial, and this adds significant weight in favour of the proposed development.

Effects on the area's character and appearance

40. In its existing condition and use, the site is clearly a visual eyesore and a blight on its surroundings. The proposed development would provide the opportunity to clear away the unsightly open storage and despoiled land, and to replace these with a well-designed housing development and landscaped areas. The scheme would therefore bring about a major visual enhancement, which again carries substantial positive weight for the appeal.

Effects on neighbours' living conditions

41. Although the site was quiet at the time of my visit, the existing use clearly has the potential to create noise, through the handling of stored items within the site, and the movement of vehicles. The hours of use are not restricted by any planning conditions. The proposed development would provide the opportunity to remove this potential noise source, to the benefit of adjoining residential occupiers. This benefit carries moderate weight.

Planning Balance and Conclusions

42. The proposed development would not be inappropriate in GB terms, and nor do I find the lack of affordable housing to be a compelling ground of objection. But nevertheless, the development would conflict with Policy H2 of the APNP, by virtue of its location outside the village envelope and built-up area, and it would cause unacceptable harm to highway safety, contrary to Policy BDP16. The scheme therefore fails to accord with the development plan as a whole.
43. On the other side of the planning balance, the development would provide housing to help address the local shortfall. It would also enhance the area's character and appearance, and improve living conditions at neighbouring properties, and would provide a low-key pedestrian crossing facility. Collectively, these benefits are considerable.
44. Given the shortfall in the 5-year housing supply, it seems to me that the weight that is afforded to Policy H2 in this appeal should be somewhat reduced, because in this case the operation of that policy clearly conflicts with the need to make adequate housing provision. In coming to this view, I have had regard to NPPF paragraph 14, but as the information before me does not demonstrate that all the relevant tests are met, I have not applied the added protection that that paragraph envisages for recently made neighbourhood plans. On this basis, if the only remaining objection to the appeal scheme were based on the conflict with Policy H2, it seems to me that that objection would not outweigh the scheme's benefits.
45. However, Policy H2 is not the sole remaining issue. The weightier objection in my view is the harm to highway safety and consequent conflict with Policy BDP16. For the reasons that I have outlined earlier, I consider that the proposed access arrangement would create a real and long-lasting danger to the development's future residents and other road users. To my mind, harm of this kind, involving an actual risk to life and limb, is of an order of magnitude that exceeds even the urgent need for housing. It follows that the combined weight of the harm to highway safety, together with the conflict with the APNP's locational policy, does outweigh the benefits, and does so both significantly and demonstrably.
46. I conclude that the proposed scheme does not benefit from the NPPF's presumption in favour of sustainable development, and thus the conflict with the development plan should prevail. I have taken account of all the other submissions made, but none changes this conclusion. The appeal is therefore dismissed.

J Felgate

INSPECTOR